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PROTECTION OF INDUSTRIAL PROPERTY.*

MONOPOLIES GRANTED BY GOVERNMENTS.

"The Congress shall have power:

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"To promote the progress of Science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:"

—*Art. I, Sec. 8, Constitution of the United States.*

INDUSTRIAL PROPERTY defines the whole field of property rights protected by the government through monopolies granted for terms of years. The subject of the monopolies is industrial property. The monopolies are secured by government grants awarded on stipulated conditions. The grants themselves, protecting industrial property, are variously termed patents, trade-marks, and copyrights, which designations include generally variations of any one of these classes.

It is a frequent experience of counsel engaged in the general practice of the law to have clients, either individual or corporate, come to them with their vital problem of the protection of their industrial property. What are the remedies against commercial pirates who prey upon the industrial property of their competitors rather than rely upon legitimate methods of commercial competition? What exclusive privileges do the governments extend for protection against such robbery?

This article is designed to answer such preliminary questions. It is an outline of the general extent of the protection afforded

for industrial property by this government and foreign governments. Only the definition of the boundaries and a statement of the principles of the protection of industrial property will be touched upon; it must be left to highly trained specialists to carry out the actual practice of protecting this type of property.

The answers in detail to the multitude of questions in regard to these matters, which will inevitably arise in the course of the practice of any general counsel, are outside the scope and duty of the general adviser. This article will only attempt to furnish the broad and comprehensive view of the entire situation which the writer has found by frequent consultation with general practitioners to be of rare value to them before they find it necessary to resort to specialists in the particular fields in which the questions arise.

For the purposes of covering this extensive field of the protection of industrial property, assume this instance of the general counsel of an organization being called upon to advise the Board of Directors of a new corporation, manufacturing a new product, to be marketed in the United States, the North and South Americas, and in foreign lands, in regard to methods and means of protection open to the corporation at home and abroad. Further, assume that the corporation is manufacturing a new commodity which is a product of the combination of the mechanical, electrical and chemical arts, as for instance, a soap; that to manufacture this commodity, a new process must be used; that the commodity is marketed with the trade-mark of the corporation indicating the origin of the goods, and the goods are shipped throughout the world; assume that the box in which the commodity reaches the ultimate consumer bears the distinctive labels of the firm; that the distinctive mark of the house is used in the form of "prints" employed in advertising, but not attached to the goods directly nor to the cartons containing the goods; and that books of instruction explaining the uses of the commodity accompany it.

All these things are the product of the exclusive energy, genius, ingenuity and creative thought of the new organization made possible through its financial resources and the activity of its personnel.

The Manufacturers' Question.

The signal question immediately arises, what, if any, part of this exclusive property can be taken by the corporation's competitors or by anyone of the general public? What protection does the government of the United States afford, and what protection do foreign governments afford, for these articles of industrial property brought into being by this corporation? Can competitors imitate, and, if so, to what extent can they imitate the product, its dressings, the form in which it is delivered to the public, the advertising, the sales methods, and even the appearance of the article itself?

This article is the general answer.

I. Patents.

The first question which will arise will be that of patent protection. Patents are variously divided into those known as mechanical patents or patents covering machines, patents for a process or art of doing or performing or producing a particular product, patents for chemicals or compositions of matter, and patents for designs to protect in an exclusive way specific configurations of ornamental character.

To summarize the classes of patents:

1. Mechanical,
2. Process or art,
3. Composition of matter (chemical), and,
4. Design.

Probably the machinery used in this particular corporation to produce the soap would be the first consideration. How can this machinery be protected? The procedure would be to secure patents on the mechanism, or mechanical patents.

After having passed by the question of protecting the machinery for producing a soap, then the question would arise whether or not the process by which the soap was made could be protected. In the making of soap the various machines employed, for the patenting of which we have already provided, would probably be used in series, each one carrying out a co-

related and coördinated step in the method of producing the final product of the finished soap. Step by step, from machine to machine, this process would progress, until the finished article, ready for consumption, was finally secured. The machines employed in the manufacture of soap and employed in this process, would probably be electrically driven and would involve the application of heat, light, electricity, chemistry, pneumatics, hydraulics, etc. Some of the operations in producing the soap would have to be guided or performed by hand, while others would be performed by machines of more or less automatic nature. The series of steps so related would be a process and, consequently, patentable. "The generic definition of the process is, 'an operation performed by rule to produce a result.'" [1]

The soap itself is a product of an ingenious chemical compound, we may well assume, and is, therefore, entitled to ample protection. A patent or patents will be granted to protect the corporation in its ownership of the compounds or formulæ which represent the various combinations of material which, when taken together, represent the completed product. The term "composition of matter," is inclusive of all composite articles which are the union of two or more ingredients, irrespective of whether this union is a chemical one, a mechanical one, or whether the elements so combined are in the form of gases, liquids or solids. A composition of matter is patentable providing, of course, that it is eligible under the rules provided for the granting of patents.

The soap itself may be turned out with a certain design upon each cake or bar, or a specific configuration or shape which is both novel and ornamental. Such a design is valuable because it lends some artistic quality to the product, makes it attractive to the purchaser in the esthetic sense, and lends a certain distinction to the manufacturers offering it to the public. A design patent would protect this feature.

Design patents have been defined variously, but no definition is, perhaps, more apt than the definition of the Circuit Court of Appeals for the Second Circuit, in Howe *v.* Blodgett & Clapp

[1] Walker on Patents, 4th ed., p. 3.

Co.[2] No Court of Appeals in the United States has had more experience or has passed with greater learning and care upon patent questions than the Second Circuit; a definition from that Court is particularly helpful, and especially so in this case because the Court adopted the definition of Judge Townsend, sitting on circuit, who spoke as follows:

> "Patents for designs are intended to apply to methods of ornament, in which the utility depends upon the pleasing effect imparted to the eye, and not upon any new function. * * * Design patents refer to appearances, not utility. Their object is to encourage works of art and decoration which appeal to the eye, to the esthetic emotions, to the beautiful."

Further, the structure for a design must be unitary, must be ornamental as opposed to the useful qualification of mechanical patents, and must, of course, be novel. An article cannot both be copyrighted and be the subject of a design patent. "The author or owner is driven to his election and must stand by his choice." [3] In the case of trade-marks, if the subject of a design patent is identical with the subject matter covered by a trade-mark, the Patent Office has decided that when a certain device has had a design patent issued to cover it, the Office will not grant another registration for the same design as a trade-mark, because that would impair the right of the design patentee.[4] If a design patent has expired, then its subject matter may be registered as a trade-mark, providing, of course, that the trade-mark statutes are complied with.[5] It has been held that "the designer of articles of manufacture not otherwise entitled to receive design patents, cannot justify the issuance of such patents on the theory that the design is a trade-mark." [6]

No attempt is made in this discussion to define invention either inclusively or exclusively, because that is a matter for specialists highly trained in the technical rules of patent practice. The

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[2] 112 Fed. 61.

[3] Louis De Jonge & Co. *v.* Brenker & Kessler Co., 182 Fed. 150.

[4] Lee & Shepard, 24 O. G. 1271.

[5] King, 46 O. G. 119.

[6] Rowe *v.* Blodgett, etc., Co., 112 Fed. 61; Coates et al. *v.* Merrick Thread Co., 149 U. S. 562.

sole object of this article is to outline what protection the governments afford, without making any attempt to discuss the multitude of technical rules which govern the granting in specific instances of particular protection.

The corporation now has, we may assume, material for mechanical patents, process patents, composition of matter patents, and design patents, and has thus proceeded to the protection of such property.

General Requirements of Patents.

A patent is an exclusive grant or monopoly awarded to an inventor or author in return for his making known and, therefore, making available to the public, his discovery, or creation. This exclusive right for the specified term of years is the exclusive right to make, use and sell. The exclusive right to make, use and sell is the cardinal trinity, the quality of which is defined by the word *exclusive*. The patent law does not give the right merely to make, use and sell, because that is presumably inherent in the production of the article, but what the patent law does give is the beneficial *exclusive* privilege.[7]

The term of mechanical, process, and composition of matter or chemical patents is seventeen years of the exclusive privilege to make, use and sell the subject matter covered by the particular patent. Different terms are provided for design patents; they are granted for the varying terms of three and a half, seven and fourteen years, as the applicant may, in his application, elect.[8]

Patents may be invented by one man or by several. If by one man, it is known as a sole invention; if by more than one, it is known as a joint invention. Great care and caution should be taken before the application for the patent is filed to determine the exact nature of the inventorship, whether sole or joint, because unless this is properly determined, it may lead to a defeat of the application or patent. Many corporations employing a number of inventors amongst whom there is considerable

[7] U. S. R. S., § 4884.
[8] U. S. R. S., § 4931; Patent Office Rules, No. 80.

rivalry have experienced a great deal of difficulty in determining exactly who were the inventors. It is highly essential that this be regarded with great care.

As to what person may apply for and receive a patent for his invention or discovery, it is best to quote the language of the Statute, which says:

> "Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvements thereof." [9]

The patent may be obtained provided that it has not been known or used by others in this country before the invention or discovery thereof, and provided it has not been patented or described in any printed publication in this or any foreign country, before the invention or discovery thereof for more than two years prior to the filing of the application; and providing, further, that the subject matter of the application has not been in public use or on sale in this country for more than two years prior to the application, unless the same is proved to have been abandoned. Upon this same question, it is to be observed that no person will be debarred from receiving a patent for his invention, nor will have his patent declared invalid, where the invention has been patented in a foreign country, unless the application filed in the foreign country was filed more than twelve months prior to the filing of his application in the United States. The time of twelve months is shortened to four months in the case of designs.[10]

The method of applying for a patent is to state fully and clearly the exact nature of the invention in what is known as a specification, illustrated by proper drawings, and the exact nature of what the inventor believes to be his exclusive property, being defined by what is known as claims. Claims define the boundaries of the monopoly. No legal instrument requires more learning and skill to draw properly than a patent claim. The preparing and prosecution of an application is a matter for highly trained specialists.

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[9] U. S. R. S., § 4886.

[10] U. S. R. S., § 4887.

The question of reissue or extension frequently comes up through the questions of inventors or those owning inventions. A provision is made for reissue of a patent under certain conditions, some of which are the reissue of a patent which is inoperative or invalid by reason of a defective or insufficient specification or by reason of the patentee claiming more than he had a right to claim, provided the error has occurred by reason of inadvertence, accident or mistake, without any fraudulent or deceptive intent. It is a matter of considerable difficulty, usually, to have patents reissued, and when they are reissued, they frequently involve a great many technical questions, so that it is, altogether, a matter to be avoided, if possible. It is rare that the patent is ever reissued when more than two years have elapsed. Then, too, if during the interval before the patent is reissued, any rights of other parties have intervened, that may prove a vital stumbling block to the securing of the new patent. Extensions are granted only by act of Congress, a matter too cumbersome for use except in the rarest cases.

The application for the patent may be assigned in whole or in part, or rights under patents may be granted by means of a license.[11] The interests may be invested in assignees, in grantees of exclusive sectional rights, in mortgagees, and, as has been pointed out, in licensees. Definitions of the kinds of interests so acquired by these transfers are best set forth in Patent Office Rule No. 196:

"(1) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

"(2) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented, within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.

"(3) A mortgage must be written or printed and be duly signed.

"(4) A licensee takes an interest less than or different

[11] U. S. R. S., § 4895.

from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed."

The government requires in the way of fees, $15.00 at the time of filing the application and $20.00 upon allowance of the application. This $20.00 is payable any time within the six months from the date of allowance.[12] This applies to all patents except design patents. Fees for design patents vary with the term of years for which they are granted. They are, for the three years and six months, $10.00, seven years, $15.00, and for fourteen years, $30.00. On the application for reissue of a patent, the fee is $30.00.

At this point, it might not be out of place to caution the general practitioner to see that his client marks carefully, with the patent number and date, machines embodying the invention which such date and number identify through the patent issued for the invention. Further, and perhaps more important still, great care should be used to mark only machines which actually embody the invention for which the patent is issued. False marking is a serious matter and may subject the person who so marks to embarrassing difficulties. The marking is valuable because it gives notice to the public of the fact that the machine, or whatever it may be, which is the subject of the patent, is actually patented. This acts as a warning and is useful in case of a suit, because no specific notice is then necessary from which to date a recovery for the invasion of the monopoly.[13]

We have now proceeded with a protection of the business of the corporation we have in mind to a point where we have patents applied for or granted which will protect the machinery, the process of producing the product or the art or method of so producing it, the chemical composition or union of the various elements which go into the making of the soap. and the design of the finished article itself. So much for the manufacturing end.

But what of the distribution and sales of the business, what of the protection against commercial pirates imitating this product in form, in design, in labels, in wrappings, in boxes, in cartons, in advertising, etc., in which and through which the product may be-

[12] U. S. R. S., § 4934.

[13] U. S. R. S., § 4899.

come known to the general public, who have no means of knowing that this article is the article produced by the particular company except through these distinctive dressings, wrappings and advertising used by the company to designate its product.

The means of protection of this kind of industrial property are found in trade-marks, labels, prints and copyrights.

II. Trade-Marks.

A trade-mark is "the commercial substitute for one's autograph." [14] It is an arbitrary, distinctive mark or designation, indicating the origin and ownership of the goods to which it is attached or the cartons in which the goods are sold.[15]

In this business of marketing soap, the trade-mark could be impressed upon the soap itself or printed upon the wrappings of the soap or on the boxes containing it. It could be used in all these ways. It could be used in the advertising, in the trade literature of the concern, and in all the various ways that might occur to the ingenious sales manager in identifying the high quality of his product with this distinctive mark, so that a purchaser once having used soap of this character which he found satisfactory would have a ready means of calling for the same article again when he needed any additional supply.

Who may register a trade-mark? A trade-mark may be registered by any person, firm, corporation or association domiciled within the territory of the United States or residing in or located in any foreign country, which, by treaty, etc., affords a similar privilege to the citizens of the United States, and who is the owner of such trade-mark and uses it in commerce with foreign countries or in interstate commerce.[16] Further, the owner of a trade-mark residing or located in a foreign country but having a manufacturing establishment within the United States may register his mark on the products of such establishment upon complying with the proper provisions of the law.[17]

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[14] Leidersdorf *v.* Flint, Fed. Cas. No. 8219.

[15] Standard Paint Co. *v.* Trinidad Asphalt Mfg. Co., 220 U. S. 446; Elgin National Watch Co. *v.* Illinois, etc., Co., 179 U. S. 665.

[16] Act of Feb. 20, 1905, § 1.

[17] Act of Feb. 20, 1905, § 1.

What may be registered as a trade-mark? The trade-mark must be a distinctive object of identification, arbitrary in character and not merely descriptive of the goods to which it is attached. It must not be of improper character, nor consist of or comprise the flag of the United States or any of the emblems of the political sub-divisions thereof or of any foreign nation, nor the emblem of any fraternal society unless in the last case proof of prior adoption can be shown to the satisfaction of the Commissioner of Patents. The trade-mark must not be a registered or a nonregistered trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties as that of the applicant, because, if the trade-mark were granted to the applicant, it would be likely to cause confusion or mistake in the minds of the public or deceive purchasers. The mere name of an individual, firm, corporation or association which is not printed or written, impressed or woven in some particular manner or in association with the portrait of an individual, is not eligible to registration. Geographical terms cannot be registered. Portraits of living individuals cannot be registered as trade-marks except on the written consent of such individuals.[18]

The trade-mark is registered by the filing of an application accompanied by five specimens of the mark as it is actually applied to the goods, and a drawing showing the mark. The application must state, amongst other things, the particular class of goods upon which the mark is to be applied. The U. S. Patent Office has divided all products into fifty classes. Then the particular kind of merchandise in that particular class must be set forth, with a statement as to how the mark is applied and affixed to the goods, and the length of time during which the trade-mark has been used upon the goods. The trade-mark must, of course, have been used in interstate commerce.[19]

Upon the allowance of the application, the mark will be published at least once in the Official Gazette issued by the Patent Office, and the publication shall be at least thirty days prior to the date of registration. If no one files a notice of opposition within thirty days after the publication, then a certificate of regis-

[18] Act of Feb. 20, 1905, §§ 15 and 21; and the Act of Feb. 18, 1909, § 1.
[19] Act of Feb. 20, 1905, § 2; Act of Feb. 18, 1909, § 2.

tration will be issued.[20] This opposition, if made, would consist in the filing of a statement showing that the mark did not belong to the person who was applying for registration of it, or that the mark was so similar to the opposer's mark that it would cause confusion in the minds of the public, etc.

The term for which the exclusive right to the mark is granted is twenty years, except in the case of trade-marks previously registered in a foreign country, in which case the protection ceases on the same day on which the trade-mark ceases to be protected in the foreign country. Certificates of registration may be renewed from time to time for periods of twenty years upon the payment of renewal fees.[21]

Even though a trade-mark may not be technically a trade-mark and, therefore, not registrable in the U. S. Patent Office, yet if that trade-mark was in use for ten years or more prior to Feb. 20th, 1905, then that mark can be registered irrespective of its failure to comply with the technical requirements of the trade-mark law.[22]

The fees are $10.00 for filing an original application, and $10.00 for filing a renewal.

A number of states in the United States provide for registration of trade-marks. This state registration is comparatively inexpensive, and is of value because a registration in leading states like New York, Pennsylvania, Ohio, Illinois, etc., would prevent any infringer from using the same mark, because he would not be able to distribute the goods under that infringing mark in those states in which his commercial possibilities would be large. By using the state registration, even though in a few of the states, it is sufficient to break up any practical commercial plans of the infringer.

These trade-marks can only be assigned when the business itself which they identify is assigned. They cannot be assigned separately. The reason is apparent, because the vital point of the whole matter is that the trade-mark shall identify the business and is inseparable from it.

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[20] Act of Feb. 20, 1905, § 6.
[21] Act of Feb. 20, 1905 (as amended), § 12.
[22] Act of Feb. 20, 1905 (as amended Jan. 8, 1913), § 5 (b).

A very efficient form of protection in certain instances is the registration of the mark through the Treasury Department of the United States Government. It is provided that no article which shall bear a copy or simulation of a trade-mark registered in accordance with the provisions of the law in the United States, or an article which is manufactured in any foreign country or locality other than that in which it is in fact manufactured, shall be admitted to an entry at any customshouse of the United States. In order to aid the officers of customs to enforce this prohibition, any domestic manufacturer or trader or any foreign manufacturer or trader entitled to protection by a treaty, etc., can have a copy of the certificate of registration of his trade-mark recorded in the books of the Department of the Treasury. Facsimiles of the mark are to be furnished to the Secretary of the Treasury, which copies will be distributed to the customshouses or proper officers in the various ports of entry of this country. This has a practical meaning, in that it prevents the importation into this country of inferior articles of manufacture by outsiders who cannot be reached for infringement of the trade-mark under which they are shipping the goods into this country and deceiving the public by the unauthorized use of a domestic trade-mark or a simulation of it.[23]

The trade-mark must be marked by a notice of registration in the U. S. Patent Office. The same rule in regard to notice and its advantages applies to trade-marks as to patents.[24]

III. Labels.

A label is a special form of designation identifying the product which is attached to the article of manufacture or its container, as for instance a gummed strip of paper or poster. The label must be suggestive of its connection with the article to which it is attached or connected.

This is a wise requirement in view of the fact that it must be impressed or stamped directly on the article or upon its container. This fact is an essence of its character. The fee for recording is $6.00; there is no final fee.

[23] Act of 1905, § 27.

[24] Act of 1905, § 28.

The term of exclusive protection shall be twenty-eight years with the privilege of renewal.[25]

IV. Prints.

A print is "an artistic representation for intellectual production not borne by an article of manufacture or vendible commodity, but in some fashion pertaining thereto, such, for instance, as an advertisement thereof." [26] The print is used as a decorative emblem or artistic representation which the company will use upon its advertising, in its trade literature, in its circulars, and in its publications which describe its product and its use. It must refer to the article which it advertises, although it need not be attached to it. Like the label, it is related to the copyright law, and like the label is copyrighted. The term of registration of a print is twenty-eight years, and the fee for filing an application is the same as that of the label. The print is primarily an artistic representation, and is distinguished from the label by not being borne by the article of manufacture or its container as the label would be. It is used in the advertisement of the article primarily. Its purpose is to protect the public in its purchase by advertisement in connection with the goods of acknowledged standard. It must not be connected absolutely with the fine arts, for then it would be subject to copyright only, but it must have some artistic quality as well as a commercial character.[27] Both prints and labels may be assigned by an instrument in writing signed by the proprietor. Either an individual, a firm or a corporation or the representatives of such applicants can apply for registration of the print or label.

V. Copyrights.

The copyright act gives to the author the exclusive right to print, reprint, publish, copy, and vend his copyrighted work for the period of twenty-eight years with renewal privilege for similar periods.

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[25] Act of June 18, 1874; and Act of March 4, 1909.
[26] Ex parte Bowles, 97 O. G. 2308.
[27] Act of June 18, 1874; and Act of March 4, 1909.

The particular interest of copyright in our illustration is the copyright of the manuals of instruction, or the books of description of various uses of the soap. The literature of the corporation may consist of booklets or pamphlets describing the process by which the soap is made, or the particular factory in which it is made, or any other matter of interest which the corporation may desire to put before the public. These booklets, pamphlets, etc., can be copyrighted. Any photographs, prints and pictorial illustrations can be copyrighted. Likewise, as is becoming the modern custom amongst large corporations, moving pictures of scenes about the plant or of the processes of its manufacture are being taken. These moving pictures can be copyrighted as well as motion picture photo-plays which are taken in and about the plant; they are now largely used for advertising commercial institutions. Likewise, drawings or plastic works of a scientific character, works of art, models or designs of works of art, and reproductions of works of art can be protected.[28]

Under the Act of 1909, the method of securing copyrights is as follows: The publication has placed upon it the notice of copyright, giving the word copyright, or some similar designation, followed by the year and the name of the copyright proprietor. The book or pamphlet is published; this initiates the copyright. Then the application for copyright is filed, giving the date of publication and other pertinent matters required. Then the certificate of registration for the copyright will issue. The Act of 1909 is peculiar in that the copyright notice is placed upon the book, etc., and the book is distributed to the public before the registration is actually granted.

Foreign Protection.

We now come to the problem of the corporation distributing its goods in foreign countries.

It is unwise for any corporation which has a product worthy of its name to distribute its product in foreign countries unless it has some measure of patent or trade-mark, or possibly copyright protection, or all of them, if possible, provided, of course,

[28] Act of March 4, 1909.

it is possible to secure such protection. When it is possible, it is poor business judgment not to secure such protection in the country into which the products will go. This is true for two reasons: first, because of the monopolistic protection afforded which can be enforced by legal means; and, second, because of the monopolistic protection afforded by the warning notice of registration, which is in effect, a moral means. The latter has been found, in many cases, to be most effective to deter unscrupulous individuals from appropriating the property of those to whom it rightfully belongs, but who are located at a distance from the point of distribution in the foreign country.

Foreign patents can be obtained generally under the International Convention. The rule which will interest the general practitioner is simply that the question of foreign patents should be taken up at once upon the filing of the applications for patents in the United States. The question can then be disposed of with safety to the client and with opportunity to comply with the provisions of the foreign laws and international agreements. No attempt will be made here to go into the technicalities of this procedure.

Particularly necessary is the registration of trade-marks in foreign countries, because goods are so largely bought in those countries of foreign manufacturers by reason of distinctive marks. The mark is particularly effective in use in Latin and Oriental lands by reason of the turn of mind of those peoples. The mark in the United States should be designed so that it will be readily pronounceable or useable in those foreign countries. In some cases the trade-mark has to be registered in the United States first, and then can be registered in the foreign countries. In other cases this is not necessary. The provisions of foreign laws are very technical and require a thorough knowledge of local conditions. Various requirements for legalizations, actions of certain councils, etc., make the matter one of great care. Manufacturers from time to time are misled into signing powers of attorney in foreign languages which bring great disaster upon them because the powers confer a degree of authority which the manufacturer would not consent to if he had understood the language of the power. The rule in

many countries, principally in South American countries, is that the first to register a mark is the owner and can keep all others from using that mark. In the United States the rule is to the contrary, namely, that the registration of the mark is prima facie evidence of ownership, but if the real owner can prove his prior title to the mark, he can defeat the registration and exert his exclusive right to it.

This foreign rule works to the great loss of many manufacturers who send their goods into foreign countries, if they have not registered their mark, because some enterprising commercial pirate, as is frequently the case, seeing the prospects of the concern coming into that country, registers the mark in his own name before the goods are sold in that particular locality. The pirate gambles on the chance of holding up the manufacturer when he starts to distribute his goods, because usually a penalty in the shape of a fine, or even imprisonment, is attached to sending goods into a country under a mark which belongs to another. The pirate, having secured registration of the mark belonging to the American manufacturer, awaits his opportunity when the manufacturer imports the goods. The goods having been shipped into that country, the manufacturer is belonging to the American manufacturer, awaits his oppor- a technical sense, and in a sense which will be enforced by the laws in that foreign country. He either has to use a new mark or buy off the man who has perpetrated what is a moral fraud. This has been the actual experience of a number of manufacturers.

The conclusion to be reached in this foreign matter is that if the manufacturer is going into foreign fields, or has prospects of going into foreign fields, he should look to his foreign protection in the early stages of the business.

The foregoing discussion outlines the various forms of protection which a corporation or an individual or a partnership engaging in business involving industrial property may secure. The monopolies frequently grow to great values. The wise provision of the United States Statutes for the protection of industrial property has been the cornerstone for the building of our industrial and commercial prosperity. The provisions of

these laws are such as to encourage the creation and invention and discovery of things useful to the public, which are granted protection of temporary monopolies in favor of the inventor or owner or discoverer, in return for the corresponding benefit that the disclosure confers upon the public. In the United States there are no working provisions, no compulsory license systems, no annual taxes or other burdens which are frequent and almost universal in many foreign countries. In this lies a part of the explanation of our great activity in the field of industrial property and our signal leadership in the creation of remarkable machinery, chemical compounds, and ingenious devices generally which have so widely benefited humanity, and in our literary and artistic creations as well.

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